5. *Prequalification and preapproval programs.* Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request, as discussed in the commentary to section 202.2(f). For instance, a creditor may treat the request as an inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision. On the other hand, a creditor has treated a request as an application, and is subject to the adverse action notice requirements of § 202.9 if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit.

* * * * *

8. In Supplement I to Part 202, a new Appendix C—Sample Notification Forms is added at the end to read as follows:

* * * * *

Appendix C—Sample Notification Forms

Form C–9. Creditors may design their own form, add to, or modify the model form to reflect their individual policies and procedures. For example, a creditor may want to add:

i. A telephone number that applicants may call to leave their name and the address to which an appraisal report should be sent.

ii. A notice of the cost the applicant will be required to pay the creditor for the appraisal or a copy of the report.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13862 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Part 226

[Regulation Z; Docket No. R–0858]

Truth in Lending; Mortgage Disclosures; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Corrections to final regulation.

SUMMARY: This document contains corrections to the final rule (Docket No. R–0858) which was published Friday, March 24, 1995 (60 FR 15463). The amendments to Regulation Z concerned new disclosure requirements on certain home loans bearing rates or fees above a certain percentage or amount and on reverse mortgage transactions.

EFFECTIVE DATE: June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Kyung Cho-Miller, Sheilah Goodman, or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The regulation that is the subject of the corrections is Regulation Z (12 CFR part 226), which implements the Truth in Lending Act (15 U.S.C. 1601–1666j). The act (TILA) requires creditors to disclose credit terms for consumer transactions. The final rule implemented the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160). Section 152 of the HOEPA adds a new section 129 to the TILA dealing with certain mortgages bearing rates or fees above a certain percentage or amount.

Need for Correction

As published, the final rule implementing new TILA section 129 contains errors which could be confusing and should be clarified.

Correction of Publication

Accordingly, the publication on March 24, 1995, of the final regulation (Docket No. R–0858), which was the subject of FR Doc. 95–7231, is corrected as follows:

§ 226.31 [Corrected]

On page 15472, in the first column, in § 226.31, in paragraph (g), in the third line, the phrase ''annual percentage yield'' is corrected to read ''annual percentage rate''.

§ 226.32 [Corrected]

On page 15472, in the second column, in § 226.32, in paragraph (b)(1)(iii), in the first and second lines, the phrase ''required to be disclosed under'' is corrected to read ''listed in''.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board, June 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–13863 Filed 6–6–95; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 124

Small Business Size Regulations; Minority Small Business and Captial Ownership Development Assistance

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulations governing the Minority Small Business and Capital Ownership Development program authorized by sections 7(j)(10) and 8(a) of the Small Business Act, 15 U.S.C. 636(j)(10), 637(a). This final rule amends both eligibility requirements for and contractual assistance provisions within the 8(a) program. It is designed to streamline the operation of the 8(a) program and to ease certain restrictions perceived to be burdensome on Program Participants.

EFFECTIVE DATE: Except for § 124.311(a)(2), this rule is effective on June 7, 1995.

Section 124.311(a)(2) shall be effective August 7, 1995. It is applicable for all 8(a) requirements accepted by SBA on or after August 7, 1995.

FOR FURTHER INFORMATION CONTACT: Michael P. McHale, Deputy Associate Administrator for Minority Enterprise Development, (202) 205–6410.

SUPPLEMENTARY INFORMATION: On August 30, 1994, SBA published a proposed rule in the **Federal Register** (59 FR 44652) to amend both eligibility requirements for and contractual assistance provisions within the SBA's section 8(a) program. That proposal called for a 30-day comment period which was scheduled to close on September 29, 1994. In response to concerns raised that the 30-day comment period may not have been a sufficient amount of time to permit proper and thoughtful public comments, SBA, on October 27, 1994, extended the comment period through November 28, 1994. 59 FR 53947.

SBA received a total of 175 comments in response to its proposed rule. After reviewing these comments, SBA now issues this final rule.

SBA proposed this rule initially in order to simplify the operation of the

8(a) program, to make clarifying changes to the regulations deemed necessary through experience, and to permit program participants to proceed in a more entrepreneurial manner, while maintaining a high degree of program integrity. After considering the comments received, and after further review of all proposed changes, SBA has concluded that the number and scope of the proposed changes was broader than was necessary to achieve SBA's immediate and most important objectives. Accordingly, this final rule is limited to only those changes that will streamline the operation of the 8(a) program or are particularly significant, as set forth below. The remaining proposed changes will be considered as part of a more far-reaching review of the 8(a) program and will not be implemented at the present time.

This rule makes eleven significant revisions to current regulations, as follows:

(1) It permits participation in the 8(a) program by qualified small businesses owned by Community Development Corporations to an extent that is not consistent with the requirements of the 8(a) program as imposed by the Small Business Act.

(2) It simplifies 8(a) contracting procedures by eliminating the distinction established in SBA's regulations between ''local buy'' and ''national buy'' requirements, except with regard to construction projects.

(3) It eliminates the restriction on the dollar value of 8(a) contracts received by Program Participants previously imposed by SBA regulations.

(4) It eliminates the separate treatment for applying the requirements for 8(a) competitive procurements which has existed for indefinite quantity or indefinite delivery type contracts.

(5) It eliminates the separate treatment for individuals who are owners and participants of 8(a) concerns in the developmental stage of program participation so that they, like owners and principals of 8(a) concerns in the transitional stage, are eligible if their includable net worth is $750,000 or less.

(6) It streamlines procedures by eliminating the requirement that an 8(a) concern be notified twice of a termination or graduation action.

(7) It makes it easier for an 8(a) firm to add SIC codes to its business plan. Previously, concerns would have to show that a proposed new business SIC was a logical progression from its existing SIC. Under the new regulations, a concerned need merely show that it has a sound business explanation for requesting the new SIC code.

(8) It eases the ownership restrictions placed on former Program Participants.

(9) It streamlines SBA regulations by eliminating provisions dealing with SBA's expired authority to grant exemptions to the requirements of the Walsh-Healey Act and Miller Act.

(10) In response to a Court of Federal Claims directive, it establishes eligibility requirements for small disadvantaged business joint ventures.

(11) It reduces reporting requirements imposed on program participants. Each of these changes is discussed below in SBA's summary of and response to the comments received to its August 30, 1994 proposed rule. This final rule also makes various technical changes to the regulations necessary to implement these significant revisions.

Summary of Issues Raised by Public Comment

Initially, many commenters objected to the brevity of the 30-day comment period and requested that SBA extend it. As a result of these requests, SBA extended the comment period until November 28, 1994.

SBA received many comments regarding provisions for its 8(a) regulations that were not the subject of proposed changes.

Because such comments are outside the scope of this rulemaking process, SBA does not respond to them in this final rule. One commenter objected to the process by which the regulations were proposed on the grounds that SBA failed to adhere to economic analysis, planning, review, and comment requirements mandated by Executive Order 12866. SBA maintains that its issuance of the proposed rule was proper. SBA submitted the proposed rule to the Office of Management and Budget (OMB) in conformity with the requirements of the Executive Order. OMB did not believe that a full analysis of the proposed rule under Executive Order 12866 was necessary and directed SBA to publish the rule without its review under the Executive Order.

Addition of CDC-owned businesses to the 8(a) Program.

The rule adds a new § 124.114 which specifically authorizes CDC-owned small business concerns to participant in the 8(a) program. The regulation prohibits more than one concern with the same primary industry classification owned by the same CDC from entry into the program. It also establishes that disadvantaged individuals involved in the management and control of the business are not considered to have used up their eligibility under § 124.108(c) even if their personal disadvantage is used to establish eligibility of the CDC-owned concern.

This rule also makes a technical amendment to § 121.401(b) that recognizes that concerns owned by a Community Development Corporation (CDC), authorized by 42 U.S.C. 9805 *et seq.*, are not deemed to be affiliated with the CDC. This exemption from affiliation is contained in the proposed rule at § 124.114(b). SBA believes that it should also appear in this section as well. In making this amendment, the final rule separates the various provisions of § 121.401(b) into distinct paragraphs for clarity and ease of use.

This final rule adds definitions of the term ''CDC-owned concern'' and ''Community Development Corporation or CDC'' to § 124.100. Finally, the rule makes minor technical changes to §§ 124.101(a), 124.101(b), 124.102(a), 124.103, 124.104, and 124.109(d) in order to recognize the eligibility of CDC-owned concerns for participation in the 8(a) program.

A number of commenters objected to the participation of CDCs in the 8(a) program generally. As noted in the proposed rule, the participation of CDCs in the 8(a) program is required by statute and cannot be administratively eliminated by SBA.

In addition, one commenter, an association representing CDCs, urged that SBA not require that the management and control of a CDC-owned business be in the hands of one or more disadvantaged individuals. The commenter pointed out that CDCs may acquire already existing business concerns, and that it may not be a prudent business decision to immediately replace nondisadvantaged managers of such a concern in order to meet 8(a) eligibility requirements. After further review, SBA has decided to revise the rule.

In issuing regulations implementing the inclusion of CDCs pursuant to 42 U.S.C. 9815, SBA has analogized CDCs to Indian tribes. In the case of an applicant concern that is tribally-owned, section 8(a)(4)(B)(ii) of the Small Business Act, 15 U.S.C. 637(a)(4)(B)(ii), permits the management and daily business operations of the concern to be controlled by one or more members of an economically disadvantaged Indian tribe. Thus, a tribally-owned concern need not be controlled by an individual determined to be socially and economically disadvantaged. SBA believes that similar treatment can be provided to CDC-owned companies. This result is also consistent with the treatment of concerns owned by Alaska Native Corporations (ANCs), which are entities established for the economic

development of their villages or regions. ANC-owned concerns are not required to be controlled by Alaska Natives in order to participate in the 8(a) program. The Alaska Native Claims Settlement Act provides that a concern owned by an ANC shall be deemed to be both owned and controlled by such ANC. Thus, the final rule provides that a concern that is at least 51% owned by a CDC shall be deemed to be controlled by such CDC and eligible for participation in the 8(a) program, provided that it meets other eligibility criteria and its management and daily business operations are conducted by one or more individuals determined to have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification. Because of this change, the requirement that a CDC-owned concern be controlled by socially and economically disadvantaged individuals is deleted from the final rule.

Simplifying 8(a) Contracting Procedures by Eliminating the Distinction Established in SBA's Regulations Between ''Local Buy'' and ''National Buy'' Requirements, Except With Regard to Construction Projects

The rule eliminates the definitions for ''local buy'' and ''national buy'' requirements from § 124.100. The limitations in former § 124.311 (h)(3) and (h)(4) effecting who may bid on local contracts has been eliminated, except for construction contracts. All requirements other than construction requirements will now be open to eligible 8(a) Participants nationally. Construction requirements are exempt from this change because section 8(a)(11) of the Small Business Act, 15 U.S.C. 637(a)(11), requires, ''to the maximum extent practicable,'' that 8(a) construction contracts ''be awarded within the county or State where the work is to be performed.'' The final rule limits competition for 8(a) construction contracts to those Program Participants within the geographical boundaries of one or more SBA district offices. SBA believes that a Program Participant may be considered as being located within a geographical boundary if it regularly maintains an office which employs at least one full-time individual within that geographical boundary. SBA also believes that a procuring agency may offer a local sole source 8(a) construction requirement to SBA on behalf of a concern that regularly maintains an office which employs at least one full-time individual within that geographical boundary.

Several commenters expressed concern that eliminating the distinction between local and national buy requirements will adversely affect new or smaller 8(a) firms. Based on its experience with the operation of the present regulations, SBA believes that the adverse effect on new and smaller 8(a) firms will be negligible. In addition, SBA believes that the elimination of the local/national buy distinction will eliminate artificial barriers and promote national competition, something necessary for the survival of 8(a) concerns once they leave the program.

One commenter claimed that the elimination of the local/national buy distinction would restrict procurement opportunities to all but those firms located around major procurement centers such as Washington, DC, and Los Angeles, CA. SBA believes that the physical location of firms will have little bearing on where they can market themselves. In fact, 8(a) firms will have more opportunities to market themselves because they will not be restricted by district or regional boundaries.

One Federal agency opposed the elimination of the definitions for local and national buys because it believed that such elimination would create an increased opportunity for fraud and abuse. SBA does not believe fraud and abuse will increase simply by permitting 8(a) concerns to seek 8(a) contracts nationwide. SBA remains committed, however, to opposing any kind of fraud in the 8(a) program, and will work with procuring agencies to thwart such possibilities.

Eliminating Support Requirements

Section 124.307 is amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) that eliminates approved 8(a) support levels as a basis for denying 8(a) contract awards in excess of those levels. Most of the commenters supported the proposed rule. One commenter recommended that 124.307(d) be amended by adding the clause ''or approved remedial plan'' after the words ''competitive business mix'' and before the words ''imposed by 124.312'' for clarification. SBA believes that this is a logical clarification of the intent of this proposed rule, and as such, it is to be incorporated into the final rule.

The SBA Inspector General recommended that there should be some type of support level requirements. He urged that if annual levels are impractical, SBA should establish an overall dollar limit of 8(a) contracts that any individual company can receive. According to the comment, this would simplify administration of the program concerning continued eligibility and would eliminate concentration of 8(a) contracts within a small number of companies. SBA believes that a maximum support level, whether on an annual or some other basis, is not necessary with careful enforcement of competitive business mix requirements. SBA also believes that support levels unnecessarily impede the growth of 8(a) firms that are in full compliance with the mix requirements. Therefore, this recommendation was not incorporated into the final rule.

Indefinite Quantity, Indefinite Delivery

This rule also amends § 124.311(a) concerning how the competitive threshold requirements should be applied for indefinite quantity and indefinite delivery (IDIQ) requirements. Before this amendment, § 124.311(a)(2) specified that ''[f]or purposes of indefinite quantity/delivery contracts, the thresholds will be applied to the guaranteed minimum value of the contract.'' Based on its experience with the rule, SBA now believes this provision to be unacceptable because of the wide differences commonly occurring between the ''guaranteed minimum'' amounts on procurements offered to the 8(a) program and the amounts actually expended under the procurements.

The prior regulation was subject to substantial criticism. Under the prior rule, procuring agencies could offer very large procurement requirements to the 8(a) program as indefinite quantity type requirements with guaranteed minimum amounts below the applicable 8(a) competitive threshold in order that such contracts could be procured on a sole source basis, even though the procurement would very likely exceed the applicable competitive threshold during the performance of the contract. SBA believes that requirements that traditionally were procured through other contract types were being offered and accepted into the 8(a) program as indefinite quantity requirements solely to take advantage of the guaranteed minimum rule and avoid the necessity for competition. In order to eliminate this potential abuse, SBA proposed to amend its regulation to specify that the competitive threshold requirements which would be applied for *all* types of contracts, including quantity/delivery contracts, would be the Government estimate of the requirement, including options, as identified by the procuring agency.

SBA received 96 comments regarding this proposal. Most of the comments

objected to the proposed change. Many comments suggested that the change would result in a decline in the number of requirements being offered to the 8(a) program, and that this would increase costs to Program Participants as they would have to compete for requirements outside the confines of the 8(a) program that were previously accepted as sole source 8(a) awards.

Many of the individual comments that opposed the proposed change were reflected also in the comments made by the National Association of Minority Business (NAMB). NAMB opposed the change because it contended that many IDIQ contracts do not exceed the guaranteed minimum value, and that many procuring activities do not exercise options on such contracts. Accordingly, they believed that the guaranteed minimum amount is a more accurate reflection of the value of the contract than any other figure. NAMB also claimed that the expansion work under an IDIQ contract is the direct result of strong performance by the 8(a) company, and that the proposed change would, therefore, penalize 8(a) firms for good performance.

SBA's Inspector General and the Department of the Treasury submitted strong comments in support of the proposed change, citing various abuses they have found conducting periodic reviews of 8(a) contracts.

SBA shares some of the same concerns voiced by NAMB.

Clearly, not all IDIQ contracts ultimately exceed the guaranteed minimum amount. Many commenters, NAMB among them, argue that most contracts do not exceed the guaranteed minimum amount and some fall short even of that figure. Certainly, reliance on a contract's maximum authorized amount as a basis for determining the contract's value could leave small disadvantaged firms with inflated expectations and adversely affect their business development under the 8(a) program. It is for these same reasons that SBA initially adopted the separate competitive threshold requirement for IDIQ requirements.

SBA now believes, however, that the frequency of abuses to the 8(a) procurement process caused by the inappropriate use of IDIQ contracts outweighs the possible disruption to business planning caused when a guaranteed minimum amount is not exceeded. Because of the overriding need for controlling the potential for abuse in this area, SBA adopts the proposed language in this final rule, although the formatting of the section is changed for clarity from the proposed rule.

In addition, as pointed out in the NAMB analysis, SBA believes that a majority of IDIQ contracts, even when measured by the Government estimate, do not exceed the applicable competitive threshold amount. Because most IDIQ contracts will not exceed the competitive threshold, the change made in this final rule should not greatly affect the number of requirements offered to the 8(a) program.

Other commenters felt that no change was needed to the IDIQ requirement because the newly enacted Government-wide Small Disadvantaged Business (SDB) program will consolidate competitive requirements and will result in the entry of fewer firms into the 8(a) program. However, SBA does not believe that the enactment of a Government-wide SDB program lessens SBA's responsibility to deal with the inappropriate use of 8(a) IDIQ contracts.

Because of the change concerning IDIQ requirements, one commenter was concerned that procuring agencies would circumvent the competitive threshold requirement, and, thus, perpetuate past abuses of the program, by dividing one contract that exceeds the threshold amount into several smaller contracts, each below the competitive threshold amount and all to be awarded as sole source 8(a) contracts to the same Program Participant. SBA agrees that such a division would not be appropriate where a procuring agency seeks to award one large requirement to one 8(a) concern through a series of smaller sole source 8(a) awards. SBA has made a change to the regulation to take this concern into account. Specifically, the new provision will state that an 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lessor amounts in order to use 8(a) sole source procedures for award to a single contractor. SBA does not, however, believe that it would be inappropriate for a procuring agency to divide a large contract into smaller sole source contracts where different Program Participants would be awarded the smaller contracts. Such an action would be consistent with the developmental purposes of the 8(a) program and with the statutory requirement that SBA equitably distribute 8(a) awards.

Under the prior rule, contracting agencies were obligated to let contracts competitively among 8(a) concerns if the estimated value of the contract was more than $5 million for manufacturing work or more than $3 million for all other types of work. Where the anticipated price of the contracts was less than this threshold, the contracting agency was permitted to use a sole source even when the negotiated contract amount exceeded the threshold. A requirement of good faith on the part of the contracting agencies was implicit in the prior rule. The new rule makes the good faith requirement explicit, and requires that the ultimate price arrived at through negotiations not be significantly higher than the competitive threshold amount.

Economic Disadvantage Threshold for Individuals Who Are Principals or Owners of Concerns in the Developmental Stage

This rule also amends § 124.111(a)(2) to establish a $750,000 net worth economic disadvantage threshold for Program Participants in either the development or transitional stage. Previously, concerns in the developmental stage were subject to possible termination or graduation from the program if their principals had an includable net worth in excess of $500,000. This rule operated to penalize success in the program and to discourage entrepreneurship and risk-taking. Under the amended rules, concerns in the developmental stage have the same threshold as concerns in the transitional stage. SBA received no objections to this proposed elimination of a different net worth figure for firms in the developmental stage of program participation.

Streamlining Termination and Graduation

Sections 124.208(c) and 124.209(b) streamline the procedures governing graduation and termination of 8(a) Program Participants respectively. This rule eliminates the second letter of notification and the second 45 day response period provided in § 124.208(c) and § 124.209(b). SBA received no objections to this amendment, which will improve SBA's efficiency by eliminating an unneeded procedural step.

Making it Easier To Add SIC Codes to a Concern's Business Plan

Section 124.302 eases the restrictions on adding SIC codes once a concern is admitted to the 8(a) program, and shortens the time it takes SBA to respond to a request for a change in SIC code designations from 45 days to 30 days. Henceforth, a concern need not show that the new SIC Codes will be a logical extension of the old ones; just that there is a sound business reason for them. These amendments will make it easier for 8(a) concerns to maintain a diversified portfolio of products and

services. No comments were received regarding these provisions, and they remain unchanged in the final rule.

Easing Ownership Restrictions on Former Program Participants

Section 124.103 is amended to permit a former Program Participant (except those that have been terminated from 8(a) program participation pursuant to § 124.209) to have an equity ownership interest of up to 20 percent in a current 8(a) concern in the same or similar line of business. SBA believes that allowing such ownership, and thus easing the previous restriction imposed by SBA, will enhance the development of both current and former 8(a) Participants. SBA received forty-four comments in support of this provision. Two commenters, however, were concerned that this change would permit current 8(a) concerns to become ''fronts'' for former 8(a) concerns, and, thus, prolong their participation, albeit indirect, in the 8(a) program. SBA believes that there are enough safeguards in place to protect against abuse of this sort. The regulations require that management and control be in the hands of the disadvantaged owners of current 8(a) concerns. Failure to meet this requirement, which is confirmed yearly during the annual review process, is grounds for termination from the 8(a) program under § 124.209 and may cause termination of previously awarded 8(a) contracts under § 124.317. In addition, § 124.314 requires the current 8(a) concern itself (and not a subsidiary of or another concern affiliated with the 8(a) concern) to perform specified percentages of awarded 8(a) contracts. Thus, a current 8(a) participant could not shift performance of an 8(a) contract to the former 8(a) concern partial owner. Finally, one commenter recommended that SBA increase the allowable equity ownership interest by a former Program Participant to 35%. SBA believes that such an increase could give former Program Participants undue influence in current 8(a) Participants, and, thus, rejects it.

Streamlining Regulations by Removing References to Expired Authority

The final rule repeals § 124.304, (implementing statutory authority given SBA to grant Program Participants in the developmental stage of program participation a maximum of two exemptions to the requirements of the Walsh-Healey Act). It also repeals § 124.305 (implementing statutory authority given SBA to grant Program Participants exemptions from Miller Act bonding requirements). The rule reserves these sections. The former legislative authority expired on October 1, 1992, and the latter on October 1, 1994.

Establishing Joint Venture Rules for Small Disadvantaged Businesses

The final rule institutes criteria for joint ventures for small disadvantaged business (SDB) set-asides and for SDB evaluation preferences. The majority of such joint venture's earnings must accrue to the socially and economically disadvantaged individuals in the small disadvantaged business, and disadvantaged individuals must own at least 51% of the joint venture as a whole. Thus, as the examples make explicit, where a small disadvantaged concern which is 51% owned by one or more disadvantaged individuals enters a joint venture with a small concern which is 100% owned by nondisadvantaged individuals, the joint venture is not eligible even if the small disadvantaged concern earns 90% of the contract's proceeds, since 51% of 90% is only 45.9%.

SBA received seven comments pertaining to the section. For the most part, the commenters concurred with the provisions proposed by SBA. However, some commenters urged more restrictive provisions to protect against the possibility that a small disadvantaged business will ''front'' for a nondisadvantaged business. SBA has concluded that the present language, which requires that both a majority of the joint venture's proceeds and 51% of its ownership accrue directly to disadvantaged individuals, is sufficient protection against abuse.

Eliminating Quarterly Reporting Requirements

Section 124.501 adds a new paragraph (c) and redesignates current paragraph (c) as paragraph (d). The newly established § 124.501(c) requires the submission of annual audited financial statements only by larger 8(a) Program Participants, those with revenues in excess of $5 million. The requirement to submit such financial statements is not a change in SBA policy. The requirement for financial statements is currently contained in §§ 124.312 (b)(7) and (c)(10) (which have elsewhere been redesignated as paragraphs (b)(4) and (c)(7) in this final rule), and failure to comply with it is referenced as a basis for finding good cause to terminate a Program Participant in § 124.209(a)(6)(i). An earlier SBA Notice had established guidelines regarding these reporting requirements.

A majority of the comments concerning this provision of the proposed rule opposed it because of cost. Taking into account this concern, SBA has determined that it should reduce the overall reporting requirements imposed by SBA on Program Participants. Accordingly, this rule eliminates the quarterly reporting requirements previously imposed by §§ 124.312 (b)(7) and (c)(10), and the reference to a failure to submit quarterly financial statements as a basis for termination contained in § 124.209. This will lessen the paperwork burden imposed on Program Participants, and is consistent with the Agency's initiative to streamline the operation of the 8(a) program.

SBA is particularly sensitive to imposing administrative burdens on 8(a) participants. The rule as proposed was designed to make compliance as inexpensive as possible. Only Program Participants with annual gross income of $5 million or more need submit audited financial statements prepared by a licensed independent public accountant. Program Participants with a gross annual income of at least $1 million and less than $5 million need only submit reviewed financial statements prepared by a licensed independent public accountant. Program Participants with annual gross revenues of less than $1 million need merely submit an annual statement prepared by a licensed independent public accountant. The actual cost of this last type of report is negligible, and in many cases is prepared as part of tax preparation. In addition, the regulation authorizes the District Director to waive the requirement for an audited financial statement for the first year a concern is required to submit one, and authorizes the Associate Administrator for Minority Enterprise Development to waive the requirement in subsequent years. One of the grounds for waiver can be financial hardship. SBA believes that the benefits to program integrity which will result from clear and accurate financial accounting requirements is significant, and that the elimination of quarterly financial statements will reduce the overall administrative burden placed on 8(a) concerns.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is necessary to resolve several points regarding eligibility for SBA's Section

8(a) program, eliminate certain regulatory restrictions imposed on the amount of 8(a) contract dollars and the type of 8(a) contracts received by a given 8(a) Program Participant, and to ensure that the statutory requirement governing which 8(a) requirements must be competed among eligible 8(a) Program Participants not be circumvented. Whether a particular 8(a) concern is eligible for participation in, or once in, whether it, as opposed to another 8(a) concern, would be awarded a particular 8(a) contract can be affected by the rule.

As discussed above in the supplementary information, several commenters were concerned that the change in this rule relating to the application of the competitive threshold requirement in the IDIQ context would cause a reduction in the number of procurement requirements offered to the 8(a) program. SBA does not believe that any such possible reduction will be significant. In addition, also as discussed above, SBA believes that the potential for abuse that a failure to change the regulation would perpetuate outweighs any loss of contract dollars to the program. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements. In fact, it eliminates a prior requirement imposed on Program Participants to submit quarterly financial statements to SBA.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

13 CFR Part 124

Government procurement; Hawaiian natives; Minority businesses; Reporting and recordkeeping requirements; Technical assistance; Tribally-owned concerns.

For the reasons set forth above, SBA hereby amends part 121 of title 13, Code of Federal Regulations, and subpart A, part 124 of title 13, Code of Federal Regulations (CFR), as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.401(b) is revised to read as follows:

§ 121.401 Affiliation.

* * * * *

(b) *Exclusion from affiliation coverage.* (1) Portfolio or client concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), or Native Hawaiian Organizations are not considered affiliates of such tribes, Alaska Regional or Village Corporations, or Native Hawaiian Organizations, or with other concerns owned by these entities solely because of their common ownership. However, affiliation with other concerns owned by these entities may be caused by circumstances other than common ownership under this section.

(3) Business concerns owned and controlled by a Community Development Corporation (CDC) authorized by 42 U.S.C. 9805 *et seq.* are not considered affiliates of such CDC or with other concerns owned by the CDC solely because of their common ownership. However, affiliation with other concerns owned by a CDC may be caused by circumstances other than common ownership under this section.

* * * * *

PART 124—[AMENDED]

Subpart A—Minority Small Business and Capital Ownership Development

3. The authority citation for part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), and 637(d), Pub. L. 99–661, sec. 1207, Pub. L. 100–656, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

§ 124.7 [Amended]

4. Section 124.7(b) is amended by removing paragraph (b)(1) and by redesignating paragraph (b)(2) as paragraph (b).

5. Section 124.100 is amended by removing the terms ''Local buy item'' and ''National buy item'', and adding, in alphabetical order, the following new definitions of the terms ''Community Development Corporation or CDC'', and ''CDC-owned concern'':

§ 124.100 Definitions.

* * * * *

CDC-owned concern means any concern at least 51 percent owned by a Community Development Corporation as defined in this section.

* * * * *

Community Development Corporation or CDC means a nonprofit organization responsible to residents of the area it serves which has received financial assistance under 42 U.S.C. 9805 *et seq.*

* * * * *

6. Section 124.101 is amended by adding the following new sentence after the third sentence in paragraph (a), and by revising the first sentence in paragraph (b) to read as follows:

§ 124.101 The 8(a) program: General eligibility.

(a) * * * An applicant concern owned and controlled by a Community Development Corporation must meet the requirements set forth in § 124.114 and in §§ 124.102 through 124.109, as applicable. * * *

(b) In order to continue its participation in the 8(a) program, a Program Participant must continue to meet all eligibility requirements described in §§ 124.102 through 124.109, § 124.111(a), and § 124.112, § 124.113 or § 124.114, if applicable. * * *

* * * * *

7. Section 124.102(a) is revised to read as follows:

§ 124.102 Small business concern.

(a) In order to be approved for participation in the 8(a) program, an applicant concern must qualify as a small business concern as defined in part 121 of this title. The particular size standard to be applied will be based on the primary industry classification of the applicant concern. The size of a tribally-owned concern, a concern owned by a Native Hawaiian Organization, or a concern owned by a Community Development Corporation shall be additionally determined by reference to § 124.122, § 124.113 or § 124.114, respectively.

* * * * *

8. Section 124.103 is amended by revising the introductory text and the first sentence of paragraph (h) to read as follows:

§ 124.103 Ownership requirements.

Except for concerns owned by Indian tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations, as defined in § 124.110, in order to be eligible to participate in the 8(a) program, an applicant concern must be at least 51 percent unconditionally owned by an individual(s) who is a citizen of the United States (specifically excluding permanent resident alien(s)) and who is determined by SBA to be socially and economically disadvantaged. Special ownership requirements for concerns owned by Indian tribes and Alaska Native Corporations are set forth in § 124.112. Ownership requirements for Native Hawaiian Organizations are set forth in § 124.113. Ownership requirements for Community Development Corporations are set forth in § 124.114.

* * * * *

(h) A non-8(a) concern in the same or similar line of business is prohibited from having an equity ownership interest in an 8(a) concern which exceeds 10 percent, except that a former Program Participant (except those that have been terminated from 8(a) program participation pursuant to § 124.209) may have an equity ownership interest of up to 20 percent in a current 8(a) concern in the same or similar line of business.

* * *

* * * * *

9. Section 124.104 is amended by revising the introductory text to read as follows:

§ 124.104 Control and management.

Except for concerns owned by Indian tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations, or Community Development Corporations (CDCs), as defined in § 124.100, an applicant concern's management and daily business operations must be conducted by one or more owners of the applicant concern who have been determined to be socially and economically disadvantaged. (See § 124.112 for the requirements for tribally-owned entities and those owned by ANCs, § 124.113 for requirements for concerns owned by Native Hawaiian Organizations, and § 124.114 for requirements for CDC-owned concerns). In order for a disadvantaged individual to be found to control the concern, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification.

* * * * *

10. Section 124.109 is amended by revising paragraph (d) to read as follows:

§ 124.109 Ineligible businesses.

* * * * *

(d) *Non-profit organizations.* A non-profit organization does not meet the general definition of a concern as set forth in part 121 and § 124.100 of these regulations and is, therefore, ineligible for 8(a) program participation. In addition, a business entity owned by a non-profit organization is not eligible for 8(a) program participation because such a concern does not meet the requirement of being owned and controlled by disadvantaged *individuals.* Nothing in this paragraph affects the eligibility of a for-profit concern owned and controlled by an Indian tribe, including an Alaskan Native Corporation, a Native Hawaiian Organization or a Community Development Corporation (*see* §§ 124.112, 124.113 and 124.114).

* * * * *

11. Section 124.111 is amended by revising paragraph (a)(2) to read as follows:

§ 124.111 Continued 8(a) program eligibility.

(a) * * *

(2) In order for a Program Participant to maintain continued 8(a) program eligibility, the net worth of an individual claiming to be socially and economically disadvantaged cannot exceed $750,000, as calculated pursuant to § 124.106(a)(2)(i). An individual whose personal net worth exceeds $750,000, as calculated pursuant to § 124.106(a)(2)(i), will not be considered economically disadvantaged.

* * * * *

12. A new § 124.114 is added to read as follows:

§ 124.114 Concerns owned by Community Development Corporations.

(a) Concerns owned at least 51% by Community Development Corporations (CDCs), as defined in § 124.100, are eligible for participation in the 8(a) program and other federal programs requiring SBA to determine social and economic disadvantage as a condition of eligibility. Such concerns must meet all eligibility criteria set forth in §§ 124.102 through 124.109 and § 124.111(a) of this part.

(b) A concern that is at least 51% owned by a CDC shall be deemed to be controlled by such CDC and eligible for participation in the 8(a) program, provided it meets all eligibility criteria set forth or referred to in this section and its management and daily business operations are conducted by one or more individuals determined to have managerial or technical experience and competency directly related to the primary industry in which the applicant concern is seeking certification.

(c) A concern owned by a CDC must qualify as a small business concern as defined for purposes of Government procurement in part 121 of this title. The particular size standard to be applied shall be based on the primary industry classification of the applicant concern. Ownership by the CDC will not, in and of itself, cause affiliation with the CDC or with other CDC-owned entities. However, affiliation with the CDC or other CDC-owned entities may be caused by circumstances other than common CDC ownership.

(d) No CDC shall own more than one current or former 8(a) Program Participant having the same primary industry classification.

(e) SBA does not deem an individual involved in the management or daily business operations of a CDC-owned concern to have used his or her individual eligibility within the meaning of § 124.108(c).

13. Section 124.208 is amended by removing paragraph (c)(2), by redesignating paragraphs (c)(3), (c)(4), (c)(5), and (c)(6) as paragraphs (c)(2), (c)(3), (c)(4), and (c)(5), and by revising the first sentence in newly redesignated paragraph (c)(2) to read as follows:

§ 124.208 Program graduation.

* * * * *

(c) * * *

(2) *Recommendation of the Division.* Following the 45 day response period, the Division Director will consider the facts of the proposed graduation, including all information submitted by the Participant. * * *

* * * * *

14. Section 124.209 is amended by removing paragraph (b)(2), by redesignating paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) as paragraphs (b)(2), (b)(3), (b)(4) and (b)(5), by revising the first sentence of paragraph (a)(6)(i) and newly redesignated paragraph (b)(2), and by adding the following new sentence to the end of newly redesignated paragraph (b)(3) to read as follows:

§ 124.209 Program termination

(a) *General.* * * *

(6) * * *

(i) Failure by the concern to provide required financial statements to SBA

pursuant to §§ 124.312 (b)(4), 124.312(c)(7), and 124.501(c). * * *

* * * * *

(b) * * *

(2) *Recommendation of the Division.* Following the 45-day response period, the Division Director will have 15 days to consider the facts of the proposed termination, including all information submitted by the Participant. The Division Director may, if he/she deems it necessary, request additional information from the Participant. If the grounds for the proposed termination continue to exist, the Division Director shall recommend in writing to the AA/MSB&COD that the Participant be terminated.

(3) *Decision of the AA/MSB&COD.* * * * Unless appealed to OHA, the decision of the AA/MSB&COD to terminate a Program Participant shall be effective 45 days after its issuance.

* * * * *

15. Section 124.302 is amended by revising paragraph (c)(1)(i)(A) and (c)(2) to read as follows:

§ 124.302 Review and modification of business plan.

* * * * *

(c) *Changes in SIC code designations.* * * *

(1) * * *

(i)(A) A sound business explanation exists for obtaining the requested SIC code, including, for example, the acquisition of the capability to perform contracts in an industry, even if unrelated to the 8(a) concern's primary SIC code;

* * * * *

(2) SBA will make a decision on such request within 30 days from the date it receives the request.

* * * * *

§ 124.303 [Amended]

16. Section 124.303 is amended by removing paragraphs (c)(3) and (c)(4), and by redesignating paragraphs (c) (5) through (7) of paragraph (c) as paragraphs (c)(3) through (c)(5).

17. Section 124.303 is further amended by changing the reference in paragraph (d)(1) to ''paragraphs (c)(1), (c)(2), (c)(6) and (c)(7) of this section'' to a reference to ''paragraphs (c)(1), (c)(2), (c)(4) and (c)(5) of this section.''

§ 124.304 [Removed and Reserved]

18. Section 124.304 is removed and reserved.

§ 124.305 [Removed and Reserved]

19. Section 124.305 is removed and reserved.

20. Section 124.307 is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and by adding the following new paragraph (d):

§ 124.307 Contractual assistance.

* * * * *

(d) While a Program Participant's projected level of 8(a) contract support is required as part of its business plan under § 124.302(b) as a planning and development tool, the level approved by SBA will not prevent contract awards above that level so long as SBA determines the concern to be competent and responsible to perform any such contracts and the Participant is in compliance with any applicable competitive business mix requirement, or approved remedial plan, imposed by § 124.312.

* * * * *

21. Section 124.308 is amended by revising paragraph (d), the first sentence of paragraph (f)(1), and paragraph (f)(2), to read as follows:

§ 124.308 Procedures for obtaining and accepting procurements for the 8(a) program.

* * * * *

(d) *Acceptance of the requirement.* Upon receipt of the procuring agency's offer of a procurement requirement, SBA will determine whether it will accept the requirement for the 8(a) program. SBA's decision whether to accept the requirement will be transmitted to the procuring agency in writing within 15 working days of receipt of the written offering letter, unless SBA requests, and the procuring agency grants, an extension. SBA is not required to accept any particular procurement offered to the 8(a) program.

(1) Where SBA decides to accept an offering of a sole source 8(a) procurement, SBA will accept the offer both on behalf of the program and in support of the approved business plan of a specific 8(a) Program Participant.

(2) Where SBA decides to accept an offering of a competitive 8(a) procurement, SBA will accept the offer for the 8(a) program generally.

(3) Except for requirements assigned a construction SIC code by the procuring agency contracting officer, all competitive 8(a) requirements accepted by SBA may be competed among all eligible 8(a) Program Participants nationally. The only geographic restrictions pertaining to 8(a) competitive requirements, other than those for construction requirements, would be those imposed by the solicitations themselves.

* * * * *

(f) *Open requirements.* * * *

(1) If the procurement is a construction requirement, SBA will examine the portfolio of 8(a) concerns for the SBA district office where the work is to be performed for selection of a qualified 8(a) concern. * * *

(2) If the procurement is anything other than a construction requirement, SBA may select any eligible, responsible Program Participant nationally to perform the contract.

* * * * *

§ 124.308 [Amended]

22. Section 124.308 is further amended by removing the words ''approved 8(a) business support level or the'' contained in paragraph (e)(1)(iii).

23. Section 124.311 is amended by revising paragraph (a)(2), by removing paragraph (b), by redesignating paragraphs (c), (d), (e), (f), (g), (h), and (i) as paragraphs (b), (c), (d), (e), (f), (g), and (h), respectively, by adding a sentence to the end of newly redesignated paragraph (d) introductory text, by removing newly redesignated (d)(1) and (d)(2), and by revising newly redesignated paragraphs (g)(3) and (g)(4), to read as follows:

§ 124.311 8(a) competition.

(a) * * *

(2) The anticipated award price of the contract, including options, will exceed $5,000,000 for contracts assigned manufacturing Standard Industrial Classification (SIC) codes and $3,000,000 for all other contracts.

(i) For *all* types of contracts, the applicable competitive threshold amounts will be applied to the procuring agency estimate of the total value of the contract, including all options.

(ii) Where a procuring agency good faith estimate of the total value of a proposed 8(a) contract is less than the applicable competitive threshold amount and the requirement is accepted as a sole source requirement on that basis, award may be made even though the ultimate price arrived at through negotiations exceeds the competitive threshold, provided that the ultimate price is not significantly greater than the competitive threshold amount.

Example. If the anticipated award price for a professional services requirement is determined to be $2.7 million and it is accepted as a sole source 8(a) requirement on that basis, a sole source award will be valid even if the contract price arrived at after negotiation is $3.1 million.

(iii) A proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order

to use 8(a) sole source procedures for award to a single contractor.

* * * * *

(d) *Sole source above thresholds.* * * * SBA will accept a contract opportunity above the applicable competitive threshold as a sole source 8(a) requirement only if there are not two eligible offerors in the United States capable of performing the requirement at a fair price.

* * * * *

(g) *Restricted Competition.* * * *

(3) *Construction competitions.* Where a construction requirement offered to the 8(a) program exceeds the $3 million competitive threshold, SBA will determine, based on its knowledge of the 8(a) portfolio, whether the competition should be limited only to those Program Participants located within the geographical boundaries of one or more SBA district offices, an entire SBA regional office, or adjacent SBA regional offices. Only those Participants located within the appropriate geographical boundaries are eligible to submit offers.

(4) *Competition for all non-construction requirements.* Except for construction requirements, all eligible Program Participants nationally may submit offers in response to any solicitation for a competitive 8(a) procurement requirement.

* * * * *

24. Section 124.311 is further amended by removing the Example following newly redesignated paragraph (e)(4)(iii), by adding the word ''and'' after the semi-colon ('';'') in newly redesignated paragraph (e)(5)(iii), by removing newly redesignated paragraph (e)(5)(iv) in its entirety, by redesignating paragraph (e)(5)(v) as paragraph (e)(5)(iv), and by revising newly redesignated paragraph (e)(5)(iv) to read as follows:

§ 124.311 8(a) competition.

* * * * *

(e) * * *

(5) * * *

(iv) If the firm is in the transitional stage of program participation, whether it has achieved its competitive business mix targets under § 124.312, or is in compliance with a remedial plan that does not include the denial of future 8(a) contracts.

* * * * *

§ 124.311 [Amended]

25. Section 124.311 is further amended by revising the reference in newly redesignated paragraph (e)(7) to ''paragraph (f)(5) of this section'' to a reference to ''paragraph (e)(5) of this section.''

26. Section 124.312 is amended by removing paragraphs (b)(4), (b)(5), and (b)(6), by redesignating paragraph (b)(7) as paragraph (b)(4), and by revising the first sentence of newly redesignated paragraph (b)(4) to read as follows:

§ 124.312 Competitive business mix.

* * * * *

(b) * * *

(4) *Reporting and verification of business activity.* Once admitted to the 8(a) program, a Program Participant must provide annual financial statements to SBA in accord with § 124.501(c). * * *

27. Section 124.312 is further amended by removing paragraphs (c)(2), (c)(3), and (c)(9), by redesignating paragraphs (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), (c)(10), (c)(11), and (c)(12) as paragraphs (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), and (c)(9), respectively, by revising the reference to ''paragraphs (c)(4) and (c)(5)'' in the last sentence of newly redesignated paragraph (c)(7) to a reference to ''paragraphs (c)(2) and (c)(3)'', and by revising the first sentence of newly redesignated paragraph (c)(7) to read as follows:

§ 124.312 Competitive business mix.

* * * * *

(c) * * *

(7) Reporting and verification of business activity. Program Participants during the transitional stage shall provide annual financial statements to SBA with a breakdown of 8(a) and non-8(a) revenue in accord with § 124.501(c). * * *

* * * * *

§ 124.312 [Amended]

28. Section 124.312 is further amended by changing the reference in paragraph (c)(1) to ''paragraph (c)(4) of this section'' to a reference to ''paragraph (c)(2) of this section'' and by changing the reference in the same paragraph to ''paragraph (c)(5) of this section'' to a reference to ''paragraph (c)(3) of this section''.

29. Section 124.312 is further amended by changing the reference in newly designated paragraph (c)(8) to ''paragraph (c)(12) of this section'' to a reference to ''paragraph (c)(9) of this section''.

30. Section 134.312 is further amended by changing the reference in newly designated paragraph (c)(9) to ''paragraphs (c)(4) and (c)(5) of this section'' to a reference to ''paragraphs (c)(2) and (c)(3) of this section''.

31. Section 124.321 is amended by adding a new paragraph (i) to read as follows:

§ 124.321 Joint venture agreements.

* * * * *

(i) *Joint ventures for Small Disadvantaged Business Set-Asides and Small Disadvantaged Business Evaluation Preferences.* Joint ventures are permitted for Small Disadvantaged Business (SDB) set-asides and SDB evaluation preferences, provided that the requirements set forth in this paragraph are met.

(1) For purposes of this paragraph, the term joint venture has the same meaning as that set forth in § 121.401(l) of this chapter. Two or more concerns that form an ongoing relationship to conduct business would not be considered ''joint venturers'' within the meaning of this paragraph, and would also not be eligible as an entity owned and controlled by one or more socially and economically disadvantaged individuals.

(2) A concern that is owned and controlled by one or more socially and economically disadvantaged individuals entering into a joint venture agreement with one or more other business concerns is considered to be affiliated for size purposes with such other concern(s). The combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the SIC code designated for the contract.

(3) The majority of the venture's earnings must accrue directly to the socially and economically disadvantaged individuals in the SDB concern(s) in the joint venture.

(4) The percentage ownership involvement in a joint venture by disadvantaged individuals must be at least 51 percent.

Example 1. Small business concern A is 100% owned by disadvantaged individuals. Small business concern B is 100% owned by nondisadvantaged individuals. The percentage involvement by concern A in a joint venture between A and B must be at least 51%.

Example 2. Small business concern C is 51% owned by disadvantaged individuals. Small business concern D is 100% owned by nondisadvantaged individuals. Any joint venture between C and D would be ineligible because the amount of ownership involvement in such a joint venture by disadvantaged individuals would be less than 51%. Even a 90% involvement by concern C in a joint venture with D would mean an overall ownership involvement by disadvantaged individuals of only 45.9% (51% of 90), and an overall ownership involvement by nondisadvantaged individuals of 54.1% (10+(49% of 90)).

32. Section 124.501 is amended by redesignating paragraph (c) as paragraph

(d) and by adding the following new paragraph (c):

§ 124.501 Miscellaneous reporting requirements.

* * * * *

(c) *Submission of financial statements.* (1) Program Participants with actual gross annual receipts of $5,000,000 or more must submit to SBA audited annual financial statements prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B) within 120 days after the close of the concern's fiscal year.

(i) Upon request by the Program Participant, SBA may waive the requirement for audited financial statements. Waivers under this paragraph may be granted by the appropriate District Director only for the first year that audited financial statements are required. Beyond such first year, only the AA/MSB&COD may waive this requirement for good cause shown by the Program Participant.

(ii) Circumstances where waivers of audited financial statements may be granted include, but are not limited to, the following:

(A) The concern has an unexpected increase in sales towards the end of its fiscal year that creates an unforeseen requirement for audited statements;

(B) The concern unexpectedly experiences severe financial difficulties which would make the cost of audited financial statements a particular burden; and

(C) The concern has been an 8(a) Program Participant less than 12 months.

(2) Program Participants with actual gross annual receipts of $1,000,000 to $4,999,999 shall submit to SBA reviewed annual financial statements prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B) within 90 days after the close of the concern's fiscal year.

(3) Program Participants with actual gross annual receipts of less than $1,000,000 shall submit to SBA an annual statement prepared in-house or a compilation statement prepared by a licensed independent public accountant (as defined in part 107, appendix I, paragraph II. B), verified as to accuracy by an authorized officer, partner, or sole proprietor of the 8(a) concern, by signature and date, within 90 days after the close of the concern's fiscal year.

(4) Any audited financial statements submitted to SBA pursuant to § 124.501(c) shall be prepared in accordance with Generally Accepted Accounting Principles and reflect the independent public accountant's opinion.

(5) While financial statements need not be submitted until 90 or 120 days after the close of an 8(a) concern's fiscal year, depending on the receipts of the concern, a concern seeking to be awarded an 8(a) contract between the close of its fiscal year and such 90 or 120-day time period must submit a final sales report signed by the CEO or President to SBA in order for SBA to determine/verify the concern's size and its compliance with competitive business mix targets. This report must show a breakdown of 8(a) and non-8(a) sales.

(6) Notwithstanding a concern's gross annual receipts, audited or reviewed annual and/or quarterly statements may be required whenever SBA determines it is necessary to obtain a more thorough verification of a concern's assets, liabilities, income and/or expenses, or to determine the concern's capacity to perform a specific 8(a) contract.

* * * * *

Dated: April 5, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–13722 Filed 6–6–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–25–AD; Amendment 39–9248; AD 95–11-15]

Airworthiness Directives; Alexander Schleicher GmbH & Co. Model ASK 21 Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Alexander Schleicher GmbH & Co. (Alexander Schleicher) Model ASK 21 gliders. The required action requires replacing the parallel rocker with a part of improved design, and incorporating flight manual revisions. Two incidents of the parallel rocker breaking at the elevator connection on the affected gliders prompted this action. The actions specified by this AD are intended to prevent possible loss of elevator control that could result from a broken parallel rocker.

DATES: Effective July 14, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 14, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Alexander Schleicher GmbH & Company, D–36163, Poppenhausen-Wasserkuppe, Germany; or Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370; telephone (413) 625–6059. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Alexander Schleicher Model ASK 21 gliders was published in the **Federal Register** on January 18, 1995 (60 FR 3579). The action proposed to require replacing the parallel rocker at the automatic elevator connection with a part of improved design, and incorporating flight manual revisions. Accomplishment of the proposed action would be in accordance with Alexander Schleicher ASK 21 Technical Note No. 22, dated November 26, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The compliance time of this AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected gliders ranges throughout the fleet. For example, one owner may operate the glider 25 hours TIS in one week, while another operator may operate the glider 25 hours in one year. For this reason, the FAA has